

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

REEM ANTWONE COOPER,

Plaintiff,

v.

Case 1:20-cv-01123-JDT-cgc

NATHANIEL SHOATE,

Defendant.

**REPORT AND RECOMMENDATION ON *IN FORMA PAUPERIS* SCREENING
PURSUANT TO 28 U.S.C. § 1915**

On June 5, 2020, Plaintiff Reem Antwone Cooper filed a *pro se* Complaint for Violation of Civil Rights under 42 U.S.C. § 1983 (“Section 1983”) and a motion to proceed *in forma pauperis*. (Docket Entry (“D.E.”) # 1 & 2.) The motion to proceed *in forma pauperis* was granted on June 23, 2020. (D.E. # 6.) This case has been referred to the United States Magistrate Judge for management and for all pretrial matters for determination and/or report and recommendation as appropriate pursuant to Administrative Order 2013-05.¹ For the reasons set forth herein, it is RECOMMENDED that Plaintiff’s Complaint be DISMISSED pursuant to 28 U.S.C. § 1915 (“Section 1915”) for failure to state a claim upon which relief may be granted.

¹ The instant case has been referred to the United States Magistrate Judge by Administrative Order pursuant to the Federal Magistrate Act, 28 U.S.C. §§ 631-639. All pretrial matters within the Magistrate Judge’s jurisdiction are referred pursuant to 28 U.S.C. § 636(b)(1)(A) for determination, and all other pretrial matters are referred pursuant to 28 U.S.C. § 636(b)(1)(B)-(C) for report and recommendation.

I. Introduction

Plaintiff alleges that on July 2, 2019, he was pulled over by the Defendant, Narcotics Investigator Nathaniel Shoate, along with two other Narcotics Investigators, Scott Cornelson and Robert Pomeroy – defendants in a separate action filed by Plaintiff. According to Plaintiff, the reason he was pulled over was for speeding. As relief, Plaintiff “want[s] the courts to award money.”

II. Analysis

Plaintiff’s Complaint alleges violations of his civil rights pursuant to Section 1983. Pursuant to Section 1915, in proceedings *in forma pauperis*, notwithstanding any filing fee, or any portion thereof, that may have been paid, the Court shall dismiss the case at any time if the court determines that the allegation of poverty is untrue or that the action or appeal is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Pleadings and documents filed by *pro se* litigants are to be “liberally construed,” and a “*pro se* complaint, however inartfully pleaded, must be held to a less stringent standard than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 93, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). However, “the lenient treatment generally accorded to *pro se* litigants has limits.” *Pilgrims v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996) (citing *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991)). The basic pleading essentials are not abrogated in *pro se* cases. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). A *pro se* complaint must still “contain sufficient factual matter, accepted as true to state a claim to relief that is plausible on its face.” *Barnett v. Luttrell*, 414 F. App’x 784, 786 (6th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662,

678 (2009) (internal quotations and emphasis omitted)). District Courts “have no obligation to act as counsel or paralegal” to *pro se* litigants. *Pliler v. Ford*, 542 U.S. 225, 231 (2004). District Courts are also not “required to create” a *pro se* litigant’s claim for him. *Payne v. Sec’y of Treasury*, 73 F. App’x 836, 837 (6th Cir. 2003).

Generally, to successfully plead a Section 1983 claim, a plaintiff must allege (1) the deprivation of a right secured by the Constitution or laws of the United States and (2) deprivation was caused by a person acting under color of state law. *Tahfs v. Proctor*, 316 F.3d 585, 590 (6th Cir. 2003). Plaintiff has not alleged any deprivation of rights secured by the Constitution or the laws of the United States. The only factual allegation that Plaintiff makes is that the Defendant, along with two other investigators, pulled him over for speeding. In fact, Plaintiff does not allege any facts which suggest a violation of his federally protected rights. As stated above, it is not this Court’s obligation to create Plaintiff’s Section 1983 claim for him. *Pliler*, 542 U.S. at 231; *Payne*, 73 F. App’x at 837. Accordingly, it is RECOMMENDED that Plaintiff’s Complaint be dismissed.

For the reasons set forth herein, it is RECOMMENDED that Plaintiff’s Complaint be DISMISSED pursuant to Section 1915 for failure to state a claim upon which relief may be granted.

The Court must also consider whether Plaintiff should be allowed to appeal this decision *in forma pauperis*, should he seek to do so. The United States Court of Appeals for the Sixth Circuit requires that all district courts in the circuit determine, in all cases where the appellant seeks to proceed *in forma pauperis*, whether the appeal would be frivolous. Twenty-eight U.S.C. § 1915(a)(3) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.”

The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The test under 28 U.S.C. § 1915(a) for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. *Id.* It would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the defendants but has sufficient merit to support an appeal *in forma pauperis*. See *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that lead the Court to recommend dismissal of this case for failure to state a claim also compel the conclusion that an appeal would not be taken in good faith. It is therefore RECOMMENDED that the Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by Plaintiff would not be taken in good faith and Plaintiff may not proceed on appeal *in forma pauperis*.

SIGNED this 8th day of July 2020.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.